



April 22, 2004

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

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VIA FACSIMILE & FIRST-CLASS MAIL

Karen D. Johnson (3WP32)
Chief, Safe Drinking Water Branch
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Response to Information Request Under Section 1445(a) of the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.

Dear Ms. Johnson:

This letter responds to the information request from EPA Region III under Section 1445(a) of the Safe Drinking Water Act, dated March 31, 2004 ("Information Request" or "Information Requests"), to the District of Columbia Water and Sewer Authority ("DCWASA").

The Information Request is broad in scope, and, for that reason, has required an extensive search of potentially responsive documents. In an effort to be cooperative with EPA's investigation, we have worked, and continue to work, diligently to collect and review responsive documents both internally and from DCWASA's contractors, and to produce these materials within the three-week period specified in your Information Requests. We have done this notwithstanding the many other demands on our employees' time during this highly intensive period. While we believe that the two boxes of material we sent to you by Federal Express last night, combined with a supplemental production of documents that is scheduled for delivery on April 23, 2004, provide the core information sought by EPA's Information Requests, we are continuing our search and will supplement this response and/or our production promptly if and when new materials are discovered.

Some documents responsive to the Information Requests contain personal information of DCWASA's customers, such as names and home addresses, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. We are producing two versions of these documents: a complete version and one in which personal information is redacted. We ask that the EPA maintain the confidentiality of such personal information and that the redacted versions of these documents be produced where relevant in response to requests under the Freedom of Information Action, pursuant to 5 U.S.C. § 552(b)(6).

General Objections

1. DCWASA objects to the Information Requests insofar as they are overly broad, unduly burdensome and oppressive, contain indefinite requests seeking information not reasonably relevant to DCWASA's compliance with the SDWA, and thereby exceed the EPA's authority under the Safe Drinking Water Act ("SDWA"). DCWASA also objects to the Information Requests to the extent that they are vague and ambiguous.

2. DCWASA objects to the Information Requests to the extent that they ask for privileged information, including but not limited to information that is protected by the attorney-client and/or work product privileges, or the executive and/or deliberative privileges.

3. DCWASA objects to the Information Requests as overbroad and overly burdensome to the extent that they seek information that is publicly available and is equally available to Region III or has previously been submitted to Region III. DCWASA will produce such responsive information to the extent that it exists within DCWASA's records.

4. DCWASA objects to Instruction No. 3 of the Information Requests as overbroad and overly burdensome. To the extent information is known regarding the date, author, and addressee of an individual document, that information is readily available from the face of the document. The request that DCWASA identify the current location, custodian and question or subpart to which each individual document relates is burdensome and oppressive and is in conflict with Instruction No. 4, which requests that DCWASA produce documents as they are kept in the usual course of business. DCWASA is producing documents as they are kept in the ordinary course of business, in accordance with Instruction No. 4.

5. DCWASA objects to the Information Requests to the extent that they seek disclosure of information: (a) protected by any constitutional, statutory or common law privacy rights of individuals; (b) that is the subject of any confidentiality agreement between DCWASA and any individual or entity; (c) that is subject to provisions for the confidentiality of settlement discussions or agreements; (d) that constitutes proprietary or confidential business information; or (e) that is the subject of any court order restricting the disclosure of information.

6. DCWASA objects to the Information Requests to the extent that they seek documents from entities other than DCWASA. In responding to the Information Requests, DCWASA will provide non-privileged responsive documents to the extent that they are in its possession, custody or control in the ordinary course of business.

7. DCWASA objects to the Information Requests to the extent that they seek information regarding activities conducted by the prior operators of water distribution in the District of Columbia. Although DCWASA is producing documents relating to activities conducted by such predecessor to the extent that such documents are in its possession, DCWASA reserves the right to disclaim liability for activities conducted by its purported predecessors.

8. DCWASA objects to the request for a certification in Information Request No. 11 on the grounds that Region III has not identified any authority requiring DCWASA to make such a certification. As indicated above, DCWASA has searched for documents responsive to EPA's broad Information Requests under the short deadlines requested by EPA at a time when there are many other urgent demands on its key employees' time and attention. Notwithstanding these challenges, DCWASA has done its best to produce all responsive information it has found pursuant to schedule established. DCWASA intends to supplement today's production and these responses in the future if and when additional responsive material is discovered. Therefore, DCWASA cannot at this time responsibly certify that today's production is "complete." In responding to these Information Requests, DCWASA does not admit and expressly reserves its right to dispute admissibility, accuracy, truth and relevance of any document produced by it in response to the Information Requests.

Specific Objections and Responses

Without waiver of and subject to the foregoing general objections, DCWASA responds to each of the specific requests as follows:

1. *With regard to the person providing answers to these questions, state your name, business address, business telephone number and position with DCWASA.*

The party responding to this Information Request is DCWASA. DCWASA's primary place of business is 5000 Overlook Avenue, S.W., Washington, DC 20032. The main phone number for DCWASA is (202) 787-2000.

2. *With regard to any person who participated in or contributed to DCWASA's response to this Request for Information, provide that person's name, business address, business telephone number, and position with DCWASA, including whether the person is an employee or a contractor.*

A number of DCWASA employees and contractors are collecting information in response to this Information Request. Employees of the following DCWASA departments are contributing to this effort: Water Services, Engineering and Technical Services, Customer Service, and Information Technology. Such employees can be contacted through the undersigned.

3. a. *Provide all results from lead sampling or monitoring performed on drinking water supplied by DCWASA in the District of Columbia since January 1, 1994. This request includes all results in the possession or control of DCWASA or its agents or representatives (including contractors) regardless of whether the sampling and/or analysis was performed by DCWASA, a representative or agent of DCWASA (including a contractor), a homeowner or building owner, a representative of the Washington Aqueduct, a representative of any other federal*

or District of Columbia agency, or by any other person. This request seeks all results from lead sampling or monitoring in the possession or control of DCWASA or its agents or representatives (including contractors) regardless of whether the sample was taken from a building served by a known or suspected lead service line or not. This request seeks all results from lead sampling or monitoring in the possession or control of DCWASA or its agents or representatives (including contractors) regardless of whether the samples were required by EPA's Lead and Copper Rule ("LCR"), 40 C.F.R. § 141.80, et seq., or whether the samples were used to calculate the 90th percentile pursuant to the LCR. This request seeks all results from lead sampling or monitoring in the possession or control of DCWASA or its agents or representatives (including contractors) regardless of whether or not those samples were invalidated.

DCWASA objects to this request on the grounds that it is overbroad to the extent that it asks for information regarding actions by DCWASA's purported predecessors. Without waiver of and subject to the foregoing general and specific objections, DCWASA will produce non-privileged responsive documents within its possession.

- b. To the extent any samples taken to determine the concentration of lead in drinking water provided by DCWASA were invalidated, DCWASA shall identify the invalidated samples, the lead concentration of each sample, and provide an explanation as to why the samples were invalidated. Such explanation shall include the procedures followed for such invalidation, including but not limited to identifying who in DCWASA made the decision to invalidate the sample, and who if anyone at EPA approved the invalidation. Provide copies of all approvals by EPA for any lead sample invalidation*

DCWASA objects to this request on the grounds that it is vague and ambiguous to the extent that it does not identify a relevant time frame. DCWASA understands the relevant time frame for this request to be after 1996. DCWASA also objects to this request on the ground that it is overbroad, burdensome and oppressive to the extent it seeks information regarding actions and statements by representatives of Region III. Without waiver of and subject to the foregoing general and specific objections, DCWASA responds that it will produce non-privileged, responsive documents within its possession.

- 4. Identify all lead service lines within DCWASA's service area that were physically replaced from 1996 to the present for any reason, including lead service lines physically replaced in connection with normal maintenance and/or other road work.*

DCWASA objects to this request on the grounds that it is cumulative and not likely to lead to the discovery of relevant evidence to the extent it seeks information pertaining to "normal maintenance and/or other road work". Without waiver of and subject to the foregoing general

and specific objections, DCWASA responds that it will produce non-privileged, responsive documents within its possession.

- a. *Provide all work orders, daily construction reports, or any other documents reflecting physical replacement of lead service lines from 1996 to the present.*

DCWASA objects to this request on the grounds that it is cumulative and that it seeks information beyond DCWASA's possession or control. Without waiver of and subject to the foregoing general and specific objections, DCWASA responds that, contrary to its indication in the April 21, 2004 letter from Wendy Hartmann Moore to Karen Johnson re: "Confirmation of Meeting on April 23, 2004," WASA will be able to provide non-privileged, responsive documents. However, due to a copying error, these documents were not produced with the initial submission. They are being produced in a separate submission that is scheduled for delivery on April 23, 2004.

- b. *With respect to all lead service lines physically replaced from 1996 to the present, state what portions of the lead service lines were physically replaced and what portions were not physically replaced (for example, those portions downstream of the property line). When the lead service line was replaced only up to the property line, identify what, if any, portion was replaced by the homeowner and/or building owner.*

DCWASA objects to this request on the grounds that it is cumulative and to the extent that it seeks information regarding actions by the homeowner and/or building owner, it seeks information beyond DCWASA's possession or control. Without waiver of and subject to the foregoing general and specific objections, DCWASA responds that it has no jurisdiction or authority to replace lead service line pipes downstream of the property line without the owner's authorization. DCWASA responds further that it will produce non-privileged responsive documents within its possession.

- c. *Provide the location of each lead service line that has been replaced. Identify all lead samples taken following full or partial replacement of lead service lines from 1996 to the present, including but not limited to those taken to comply with the requirements of 40 C.F.R. § 141.84(d)(1).*

DCWASA objects to this request on the grounds that it is cumulative, it seeks information beyond DCWASA's possession or control, and that it seeks information that has been previously submitted to Region III. Without waiver of and subject to the foregoing general and specific objections, DCWASA responds as follows: DCWASA has no obligation to take any water samples following full replacement of lead service lines. DCWASA responds further that it will produce non-privileged responsive documents within its possession.

- d. *With respect to each lead service line that has been replaced from 1996 to the present, state the reason the line was replaced (i.e., exceedance of EPA action level for lead of 0.015 mg/L, routine maintenance, etc.)*

Without waiver of and subject to the foregoing general objections, DCWASA responds that it has replaced lead service lines throughout the District of Columbia for a variety of reasons, including routine maintenance and in order to fulfill its obligations under the SDWA. Sometimes a single lead service line is replaced for multiple purposes. DCWASA will produce non-privileged responsive documents within its possession. To the extent that a lead service line was originally identified for replacement for a specific reason, this reason can be identified from nature of the contract under which the work was performed.

5. *Provide the locations by address of all known or suspected lead service lines. This may be provided in electronic or written format.*

DCWASA objects to this request on the grounds that it is overbroad, vague and ambiguous to the extent that the request does not identify a relevant time frame. Without waiver of and subject to the foregoing general and specific objections, DCWASA responds that it will produce non-privileged, responsive documents within its possession.

6. a. *Provide the location of all lead service lines that have been tested for lead since 2000. This may be provided in electronic or written format.*

DCWASA objects to this request on the grounds that it does not specify whether it inquires about lead testing of the composition of a service line itself or of water distributed through an individual service line. DCWASA understands this request to refer to testing of water distributed through a service line. Without waiver of and subject to the foregoing and specific general objections, DCWASA responds that it will produce responsive, unprivileged information within its possession. DCWASA responds further that the location of lead service lines that have been tested for lead is identified in the lead sampling or monitoring results that are being produced in response to Information Request No. 3.a.

- b. *Identify each lead service line that has tested below the EPA action level for lead of 0.015 mg/L and been counted by DCWASA toward fulfilling the requirements of 40 C.F.R. § 141.84. This may be provided in electronic or written format.*

DCWASA objects to this request on the grounds that it is duplicative of Information Request No. 6.a. The identification of "each lead service line that has tested below the EPA action level of 0.015 mg/L and been counted by DCWASA toward fulfilling the requirements of 40 C.F.R. § 141.84" is subsumed within "the location of all lead service lines that have been tested for lead since 2000." Therefore, DCWASA refers Region III to its response to Information Request No. 6.a.